

Lawrence Flores,
Plaintiff,
v.
Clerk Orleans District Court,
Defendant.

- 1 -

constitutionally invalid, the state court judge was biased and a court recording was altered.

In September, 2019, this Court accepted and adopted the Report and Recommendation of Magistrate Judge Page Kelley (Docket Entry No. 8) dismissing Flores' § 2254 petition.

Flores filed a notice of appeal to the First Circuit in October, 2019. Shortly thereafter, the First Circuit directed this Court to issue or deny a certificate of appealability with respect to Flores' petition. For the following reasons, this Court will deny such a certificate.

I. Certificate of Appealability

Section 2253(c) of Title 28 of the United States Code provides that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a "substantial showing," a petitioner seeking a certificate of appealability must demonstrate that

reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

Slack v. McDaniel, 529 U.S. 473, 484 (2000). To meet the debatable-among-jurists-of-reason standard the petitioner must prove "something more than the absence of frivolity or the

existence of mere good faith." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

Reasonable jurists would not debate whether Flores' habeas petition should have been decided differently. Mr. Flores does not allege that he is in custody and his convictions expired well over a decade ago. Because he is not in custody pursuant to the state convictions he is challenging, the Court does not have jurisdiction to consider his petition.

ORDER

For the foregoing reasons, with respect to Flores' motion under 28 U.S.C. § 2254 (Docket Entry No. 18), a certificate of appealability is **DENIED**.

So ordered.



Nathaniel M. Gorton

United States District Judge

Dated November 19, 2019